

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(c) For purposes of this rule, an applicant has prevailed when the agency has made a final disposition favorable to the applicant with respect to any matter which could have been heard as a separate proceeding, regardless of whether it was joined with other matters for hearing.

(d) If review or reconsideration is sought or taken, whether within the agency or to the courts, of a decision as to which an applicant believes it has prevailed, proceedings on the application shall be stayed pending final disposition of the underlying controversy.

[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2847, Jan. 21, 2004]

§ 13.23 Responsive pleadings.

(a) The agency's litigating party shall file an answer within 30 calendar days after service of the application or, where the proceeding is stayed as provided in § 13.22(d) of this part, within 30 calendar days after the final disposition of the underlying controversy. The answer shall either consent to the award or explain in detail any objections to the award requested and identify the facts relied on in support of the agency's position. The adjudicative officer may for good cause grant an extension of time for filing an answer.

(b) Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 13.25.

(c) Any party to or participant in a proceeding may file comments on an application within 30 calendar days, or on an answer within 15 calendar days after service of the application or answer.

[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2847, Jan. 21, 2004]

§ 13.24 Settlements.

The applicant and the agency's litigating party may agree on a proposed settlement of the award at any time prior to final action on the application. If the parties agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. All settlements must be approved by the adjudicative officer and the head of the agency or office or his or her designee before becoming final.

§ 13.25 Further proceedings.

(a) Ordinarily, a decision on an application will be made on the basis of the hearing record and pleadings related to the application. However, at the request of either the applicant or the agency's litigating party, or on his or her own initiative, the adjudicative officer may order further proceedings, including an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. In no such further proceeding shall evidence be introduced from outside the administrative record in order to prove that the Department's position was, or was not, substantially justified.

(b) A request that the adjudicative officer order additional written submissions or oral testimony shall identify the information sought and shall explain why the information is necessary to decide the issues.

(c) The adjudicative officer may impose sanctions on any party for failure to comply with his or her order to file pleadings, produce documents, or present witnesses for oral examination. These sanctions may include but are not limited to granting the application partly or completely, dismissing the application, and diminishing the award granted.

[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2847, Jan. 21, 2004]

§ 13.26 Decisions.

The adjudicative officer shall issue an initial decision on the application